No. 95-556

In The

Supreme Court of the United States

October Term, 1995

STATE OF MONTANA,

Petitioner,

vs.

JAMES ALLEN EGELHOFF,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of Montana

BRIEF OF THE STATES OF HAWAII, ALASKA, ARIZONA, ARKANSAS, COLORADO, DELAWARE, KANSAS, OHIO, OKLAHOMA, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, NEW MEXICO, PENNSYLVANIA, SOUTH CAROLINA, TEXAS, AND WEST VIRGINIA, THE TERRITORY OF AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Is a defendant deprived of his right to due process under the Fourteenth Amendment to the United States Constitution when a jury is instructed, pursuant to a state statute, that voluntary intoxication may not be taken into consideration in determining the existence of a mental state which is an element of the offense?

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INTERESTS OF THE AMICI CURIAE

Within their respective jurisdictions, the amici States administer criminal justice systems intended to promote the safety and welfare of their citizenry. These criminal justice systems are fundamentally threatened by the rule of law adopted by the Supreme Court of Montana, namely, that the federal Constitution prohibits a State from making evidence of voluntary intoxication substantively irrelevant to whether a criminal defendant possesses the state of mind required to commit a particular crime.

Many of the amici States have laws very similar to Montana's ban on the introduction of proof of voluntary intoxication for purposes of disproving the presence of a required mental state. Many additional States have enacted so-called "rape-shield" laws that prohibit the introduction of evidence of a rape victim's past sexual conduct when consent is an issue. Such rape-shield laws embody substantive values in a manner structurally similar to the Montana statute that is at issue in this particular case.

All of the amici States share the concern that the federal constitutional analysis adopted by the Montana Supreme Court, if adopted by this Court, would in unprecedented fashion limit the States' – as well as the federal Government's – fundamental interest in defining, substantively, what constitutes a crime within their respective jurisdictions. For these reasons, the amici States urge this Court to reverse the judgment below.

STATEMENT OF THE CASE

1. The Montana legislature, as have other State legislatures,[1] has eliminated voluntary intoxication as a defense to criminal conduct and has made evidence of voluntary intoxication irrelevant for purposes of establishing the defendant's mental state. Section 45-2-203 of Montana Code Annotated, as amended in 1987, provides in relevant part:

> *Responsibility – intoxicated condition.* A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition.

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[1] *See State v. Ramos*, 648 P.2d 119 (Ariz. 1982) (Ariz. Rev. Stat. Ann. § 13-503 (1980); *see also id.* § 13-503 (1993); *White v. State*, 717 S.W.2d 784 (Ark. 1986) (Ark. Code Ann. § 5-2-207 (Repl. 1993)); *see also Pharo v. State*, 783 S.W.2d 64 (Ark. Ct. App. 1990); *Wyant v. State*, 519 A.2d 649 (Del. 1986) (Del. Code Ann. tit. 11, § 421 (Repl. 1987)); *Foster v. State*, 374 S.E.2d 188, 194-95 (Ga. 1988), *cert. denied*, 490 U.S. 1085 (1989) (Ga. Code Ann. § 16-3-4 (1968)); *State v. Souza*, 813 P.2d 1384 (Haw. 1991) (Haw. Rev. Stat. § 702-230 (1986)); *see also* Haw. Rev. Stat. § 702-230 (1993); *Lanier v. State*, 533 So. 2d 473 (Miss. 1988); *State v. Erwin*, 848 S.W.2d 476 (Mo. 1993), *cert. denied*, 114 S. Ct. 88 (1994) (Mo. Rev. Stat. § 562.076 (1983)); *Commonwealth v. Rumsey*, 454 A.2d 1121 (Pa. Super. 1983) (18 Pa. Cons. Stat. Ann. tit. 18, § 308 (Purdon 1976)); *State v. Vaughn*, 232 S.E.2d 328 (S.C. 1977); *Hawkins v. State*, 605 S.W.2d 586 (Tex. Crim. App. 1980) (Tex. Penal Code Ann. § 8.04 (Vernon 1974)).

2. On July 12, 1992, near Troy, Montana, Roberta Pavola and John Christianson were killed in the front seat of the station wagon belonging to Christianson. *State v. Egelhoff*, 900 P.2d 260, 261 (Mont. 1995). Respondent James Allen Egelhoff was found in the rear cargo area, alive but intoxicated. *Id.* At his subsequent trial for deliberate homicide under Montana law, the prosecution introduced a variety of evidence linking Egelhoff to the crimes. The State proved that Egelhoff, at the time of the murders, had no transportation, and no personal effects other than some clothing and a .38 caliber handgun which he kept in a holster on his right hip. *Id.* Sometime in early July, Egelhoff and a friend became acquainted with Christianson and Pavola, after meeting them at a campsite in the Yaak area, where all four had gone to pick mushrooms. *Id.* On Sunday, July 12, 1992, Egelhoff, Pavola, and Christianson sold their mushrooms and bought beer, after which they went to an apartment in Troy. They spent the rest of the day and evening drinking at the party and at various bars, leaving sometime after 9:00 p.m. in Christianson's station wagon. *Id.* at 261-62. Christianson drove; Pavola sat in the passenger seat; Egelhoff sat in the rear. *Id.* at 262.

3. The State at trial proved that Egelhoff and Christianson were at an IGA grocery store at about 9:20 p.m. *Id.* According to witnesses, Egelhoff at this time spoke well and did not slur his words. *Id.* at 265. A short while later, the station wagon was seen being driven in an erratic manner on Highway 2, west of Troy. *Id.* at 262. Just before midnight, two witnesses who had seen the station wagon reported the driver to the Lincoln County Sheriff's department. *Id.* A short period after the witnesses

observed the driver's erratic driving, the car had veered off of the road and into a ditch. *Id.* Pavola had been shot in the left temple; Christianson had been shot in the right back side of his head. *Id.* Pavola's body was found in the passenger seat; Christianson's was found in the middle of the front seat close to Pavola, with his legs on the floorboards in front of the passenger's seat. *Id.* Egelhoff's gun, with two spent casings, was found near the brake pedal. *Id.* Also found near the brake pedal was a stick that could have been used by Egelhoff to depress the accelerator from the rear seat. *Id.* at 265. Egelhoff was found in the back of the station wagon, where the back seat had been laid flat. *Id.* at 262. Pamela Garrison, one of the first witnesses to approach the car, testified that Egelhoff tried to avoid detection. *Id.* at 265. Egelhoff told Garrison to "stay away," and attempted to flee the scene. *Id.* Egelhoff was taken to an area hospital at about 1:00 a.m., in an intoxicated, combative, mood. *Id.* at 262. At least two officers were required to restrain him. *Id.* Egelhoff showed good coordination, and even kicked a camera out of the hands of a detective who was seeking to take his picture. *Id.* Officers on the scene testified they were surprised to learn that Egelhoff's blood alcohol content was .36 percent. *Id.* Witnesses at the scene testified that Egelhoff kept asking questions in the nature of, " 'Did you find him?' " *Id.* at 263. Egelhoff's theory at trial was that there was a fourth person in the car who had disappeared before officers arrived at the accident scene. *Id.* Egelhoff contended at his trial that his level of intoxication precluded him from having driven the car or undertaken the physical tasks necessary to kill Pavola and Christianson. *Id.*

4. Egelhoff was convicted of two counts of deliberate homicide in the state District Court of Montana. *Id.* Pursuant to § 45-2-203, the trial court gave the following instruction:

> A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the Defendant proves that he did not know that it was an intoxicating substance when he consumed the substance causing the condition.

900 P.2d at 263. The Supreme Court of Montana reversed, concluding that the instruction, based on section 45-2-203, Montana Code Annotated, deprived Egelhoff of procedural Due Process. *Id.* at 265. The Court reasoned that, because the Montana crime of deliberate homicide required the state to prove "that the defendant acted 'knowingly' or 'purposely' in causing the death of another human being," *id.* at 263, the Montana statute ran afoul of the principles of *In Re Winship*, 397 U.S. 358 (1970), which requires a State to prove every element of a crime beyond a reasonable doubt, and *Sandstrom v. Montana*, 442 U.S. 510 (1979), which struck down jury instructions that had shifted the burden of proof generally on matters of intent by directing the jury that "[t]he law presumes that a person intends the ordinary consequences of his voluntary acts." The Montana Supreme Court also relied on this Court's decisions in *Chambers v. Mississippi*, 410 U.S. 284 (1973), and *Martin v. Ohio*, 480 U.S. 228 (1987), which concerned, respectively, an alibi defense, and an assertion of the Ohio's defense of self-

defense. 900 P.2d at 264-65. The Montana Supreme Court recognized, however, that its ruling embodied a "new rule" of federal law, and thus would not apply to convictions that had survived direct review. *Id.* at 266.

ARGUMENT

Montana's Statutory Decision Substantively to Make Voluntary Intoxication Irrelevant to the Mental Element of Deliberate Homicide Does Not Violate Due Process; To Hold Otherwise Would Nullify, in a Way Unprecedented in this Court's Decisions, the States' Powers to Define Crime.

A. Introduction.

Montana's decision to prohibit a criminal defendant from pointing to evidence of voluntary intoxication as a basis for overcoming the prosecution's proof of purposeful action is a valid exercise of the States' power to define criminal conduct.

At the outset, it is important briefly to summarize what this case is not about. Respondent, for example, does not challenge his eighty-year sentence as "cruel or unusual."[2] Nor does Egelhoff claim he was not on notice

[2] *See Harmelin v. Michigan*, 501 U.S. 957, 994-996 (1991); *id.* at 996-1009 (Kennedy, J., joined by O'Connor, and Souter, JJ.). Such a challenge was never perfected in the Montana courts, and was not preserved as a ground to sustain the appellate judgment below. Had it been so perfected, *Harmelin* would cover the issue.

of the 1987 amendment to Montana law.[3] Nor is there any claim here that Respondent was physically addicted to alcohol.[4] Similarly, this case does not involve the perhaps more difficult issues that would arise if a State sought to abolish the affirmative defense of self-defense to a charge of deliberate homicide.[5] Finally, this case is also not one where a State has refused to permit proof of intoxication to negate the conclusion that a defendant inflicted fatal blows.[6]

[3] *See California Department of Corrections v. Morales*, 115 S. Ct. 1597, 1601 (1995) (quoting *Collins v. Youngblood*, 497 U.S. 37, 43 (1995)).

[4] *See Powell v. Texas*, 392 U.S. 514 (1968). Indeed, nothing in the Montana statute would prohibit Egelhoff from raising involuntary intoxication in connection with the mental state issue.

[5] *See Rowe v. DeBruyn*, 17 F.3d 1047 (7th Cir.), *cert. denied*, 115 S. Ct. 508 (1994); *White v. Arn*, 788 F.2d 338 (6th Cir. 1986), *cert. denied*, 480 U.S. 917 (1987). *But cf. Griffin v. Martin*, 785 F.2d 1172, 1187 n.37 (4th Cir.), *aff'd & op. withdrawn*, 785 F.2d 22 (1986) (en banc), *cert. denied*, 480 U.S. 919 (1987) (stating, in dictum, that "[i]t is difficult to the point of impossibility to imagine a right in any state to abolish self defense altogether, thereby leaving one a Hobson's choice of almost certain death through violent attack now or statutorily mandated death through trial and conviction of murder later"); *Isaac v. Engle*, 646 F.2d 1129 (6th Cir. 1980) (en banc) (Merritt, J., dissenting on other grounds), *rev'd*, 456 U.S. 107 (1982) ("I believe that the Constitution prohibits a state from eliminating the justification of self defense from its criminal law . . . ").

[6] *See Chambers v. Mississippi*, 410 U.S. 284 (1973). The jury instruction that was found invalid by the state court fully permitted Egelhoff to argue that he simply was not the one who pulled the trigger, because he could not have been sober enough to do so. Nor did the instructions nor any rulings on evidence bar Egelhoff from adducing his own proof of intoxication for purposes of the alibi issue, or from pointing to the proof of

Rather, this case concerns the intersection of two rules of constitutional law: (1) the principle that the Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged," *In re Winship*, 397 U.S. 358, 364 (1970); and (2) the corollary that, in this context, "due process guarantees are dependent upon the law as defined by the legislative branches." *Patterson v. New York*, 432 U.S. 197, 211 n.12 (1977). In this instance, the Montana Supreme Court wrongly undervalued the second rule, and therefore wrongly deployed the federal Constitution to invade the legislature's prerogative to define crime. In particular, the Montana Supreme Court incorrectly interpreted *Winship* and its progeny (*e.g.*, *Sandstrom v. Montana*, 442 U.S. 510 (1979)), as disabling the legislative branch from restricting the definition of the mental state elements of deliberate homicide ("knowingly" or "purposely") by the 1987 amendments governing proof of voluntary intoxication. Those amendments, by making voluntary intoxication substantively irrelevant to the mental state element in any deliberate homicide prosecution, simply establish Montana's strong policy against the irresponsible consumption of alcohol and other intoxicants, and should be upheld by this Court under the flexible approach to Due Process reflected in *Patterson v. New York*, 432 U.S. 197 (1977).

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intoxication otherwise in the record to support his alibi defense. Nor did the invalidated instructions relieve the State of the duty to prove beyond a reasonable doubt that Egelhoff in fact pulled the trigger, killing two innocent individuals.

B. This Court's Decisions Grant the States and the Federal Government Broad Discretion to Define the Mental State Elements of Serious Crimes; Such A Redefinition is All is at Issue in this Case.

This Court's decision in *In re Winship*, 397 U.S. 358 (1970), and its progeny, leaves intact the States' broad discretion to define crime. In this case, Montana has done nothing more than exercise this discretion by making voluntary intoxication a fact that cannot be used to negate proof that a defendant acted "knowingly" or "purposely." Montana was not constitutionally required to treat a homicide committed under the influence of voluntary intoxication as lawful, or as punishable as a lesser included offense. Accordingly, the judgment of the state supreme court should be reversed, and remanded for further proceedings.

The most critical error in the Montana Supreme Court's analysis is the state court's failure to appreciate the narrow limits of *Winship* and its progeny. *Winship*, to be sure, held that Due Process prohibits convicting a defendant "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged," *id.* at 364, but that holding arose in the context of a statutory scheme in which the State refused to prove anything "beyond a reasonable doubt." Because New York had allowed conviction of juveniles on a mere preponderance of the evidence, *Winship* did not define the limits of the States' sovereign power actually to define criminal acts.

Winship was followed by *Mullaney v. Wilbur*, 421 U.S. 684 (1975), which held that, because Maine generally required the State to prove "Malice aforethought" as an element of the offense of murder, it could not shift to the defense the burden of proving, even by a preponderance of the evidence, that a homicide was not murder, but manslaughter, because the defendant acted out of the "heat of passion on sudden provocation." *Id.* at 704.

Although *Mullaney's* rationale could have been expanded to require a State to disprove any defense beyond a reasonable doubt, it (1) did not affect the ability of the States to define criminal behavior in the first instance, and (2) has been significantly limited in its reach by other decisions of this Court.

These two conclusions are perhaps best demonstrated by *United States v. Park*, 421 U.S. 658 (1975), decided the same day as *Mullaney*. There, the Court upheld a criminal conviction under the Food, Drug, and Cosmetic Act, which did not require proof of "consciousness of wrongdoing," so long as the Government proved beyond a reasonable doubt that a corporate employee had " 'a responsible share in the furtherance of the transaction which the statute outlaws.' " *Id.* at 669 (quoting *United States v. Dotterweich*, 320 U.S. 277, 284 (1943)). The Court upheld instructions that had merely required the jury to find "some measure of blame-worthiness" in the actions or inactions of the corporate officer. 421 U.S. at 674. The Court observed that, "[v]iewed as a whole, the charge did not permit the jury to find guilt solely on the basis of respondent's position in the corporation; rather, it fairly advised the jury that to find guilt it must find respondent 'had a responsible relation to the situation,'

and 'by virtue of his position . . . had . . . authority and responsibility' to deal with the situation," which the instructions defined elsewhere as " 'food . . . held in unsanitary conditions in a warehouse with the result that it consisted, in part, of filth or . . . may have been contaminated with filth.' " *Id.*

Park's reaffirmation of the Government's ability to draw the net of criminal responsibility broadly, without breaching Due Process precepts, was reaffirmed in *Patterson v. New York*, 432 U.S. 197 (1977). There the Court upheld jury instructions issued under New York law that placed the burden on the defendant of proving, as an affirmative defense, the defense of extreme emotional disturbance. Because the New York statute defined murder as "causing the death of another person with intent to do so," "[i]t is plain enough that if the intentional killing is shown, the State intends to deal with the defendant as a murderer unless he demonstrates the mitigating circumstances." *Id.* at 206.

Patterson is significant in that it recognized the "social cost" of requiring the State, beyond a reasonable doubt, to disprove affirmative defenses or to negate mitigating factors. *Id.* at 208. "To recognize at all a mitigating circumstance does not require the State to prove its nonexistence in each case in which the fact is put in issue, if in its judgment this would be too cumbersome, too expensive, and too inaccurate." *Id.* at 209. In distinguishing *Mulaney*, the Court reaffirmed that "the reasonable doubt standard . . . has always been dependent on how a State defines the offense that is charged in any given case[.]" 432 U.S. at 211. To hold otherwise, the Court observed, would be "to undermine legislative reform of

our criminal justice system." *Id.* at 215 n.15. The Court thus cautioned against carrying *Winship*, as refined by *Mullaney*, to a "logical extreme." *Id.*

In this case, the Montana Supreme Court has ignored the teachings of both *Park* and *Patterson*. As in *Park*, the State legislature has redefined the criminal law in a manner that simply places an important responsibility upon those who engage in a dangerous activity: voluntarily intoxicating themselves. Mr. Egelhoff, before he engaged in significant drinking, could have left his weapon with police, or taken other steps to ensure that any negative effects of his drinking would be restrained. As in *Park*, Respondent was imbued, under Montana law, with "a duty to implement measures that will insure that violations will not occur." 421 U.S. at 672. In barring Respondent from disproving deliberate homicide by proof of voluntary intoxication, Montana merely redefined the criminal law in a way this Court has upheld in the corporate context for fifty years.

The Montana Supreme Court's decision also undermines efforts at "legislative reform" in the States. Theoretically, nothing in *Patterson* would prohibit a State from achieving the ends targeted here by defining murder "as mere physical contact between the defendant and the victim leading to the victim's death," and then setting up "affirmative defenses," such as causing a death through unavoidable accident, by mistake, or as a result of a consensual medical procedure. *Patterson*, 432 U.S. at 224 n.8 (Powell, J., dissenting). The critical point here is that, to achieve the ends Montana seeks if its state court is upheld, Montana *must* have such a draconian statute. As *Patterson* recognizes, States are not limited to such an

"egregious" but "formalistically correct statute," *id.*, at n.9, and need not treat individuals who shoot others but do not "intend" in some sense to do so because they are voluntarily drunk, as meriting any defense arising out of that self-induced condition. As this Court noted more than twenty years ago, "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike[.]" *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). By eliminating the issue of the effect of voluntary intoxication on an accused's mental state, Montana reaffirms this basic truth.

Nor is the Montana Supreme Court correct in characterizing the statutory framework, or the jury instructions that were given in this case, as being infected by *"Sandstrom"* error. *See Sandstrom v. Montana*, 442 U.S. 510 (1979). There, the Court held that giving an instruction stating that " 'the law presumes that a person intends the ordinary consequences of his voluntary acts' " violated the Due Process Clause because it impermissibly shifted to the defendant the State's burden to show that the homicide was "purposely or knowingly" perpetrated. 442 U.S. at 512. In this case, the State's burden was not shifted; rather, the burden of showing intent was effectively eliminated *to the extent* voluntary intoxication, rather than blameless mistake, accident, or consent, was the cause of the deaths of Pavola and Christianson.

For these reasons alone, the judgment must be reversed.

C. Given the Unique and Devastating Effects of Drugs and Alcohol on the States' Crime Rates, This Court Should Be Especially Solicitous of the States' Reform Efforts Here.

Although the straightforward doctrinal analysis, *supra*, demonstrates that the Montana Supreme Court's analysis cannot stand, the correct answer to the Question Presented here is best "illuminated if this issue is placed in historical context." *Mullaney*, 421 U.S. at 692. As the Court noted in *Mullaney*, "[a]t early common law only those homicides committed in the enforcement of justice were considered justifiable[.]" *Id.* Although in light of developments since the thirteenth century, some affirmative defenses (or the right to conviction of a lesser crime) might be constitutionally compelled, no reasoned reading of this Court's precedents warrants the conclusion that voluntary intoxication is one of those matters. To hold otherwise would defy not only lengthy precedent and history, but logic itself.

Under early American common law, voluntary intoxication was not a defense in a criminal prosecution, even though the intoxication had prevented the defendant from understanding his actions, having the required culpable mental state, or remembering the events. *See generally United States ex rel. Goddard v. Vaughn*, 614 F.2d 929, 934-35 & nn.5-7 (3d Cir. 1980). In the nineteenth century, the courts, in an effort to mitigate the common law rule, crafted a new rule, allowing evidence of voluntary intoxication to negate the required mental state in "specific intent" crimes, but making the evidence inadmissible for "general intent" crimes. *See generally* Hall, *Intoxication and Criminal Responsibility*, 57 Harv. L. Rev. 1045, 1046-49

(1944); Paulsen, *Intoxication as a Defense to Crime*, 1961 U. Ill. L.F. 1, 10-11.

Montana and those States that have rejected this common law formulation have made a valid policy judgment that the dangers of the intoxicated actor warrant displacement of the "specific intent"/"general intent" dichotomy. Alcohol and other forms of intoxication, as this Court is well aware, account for a large portion of the criminal activity in America today.[7] As one court has noted, the"specific intent"/"general intent" rule "undermines the criminal law's primary function of protecting society from the results of behavior that endangers the public safety." *State v. Stasio*, 396 A.2d 1129, 1134 (N.J. 1979) (footnotes omitted). Thus, regardless of the culpable mental state demanded of the sober actor, "if a person casts off the restraints of reason and consciousness by a voluntary act, no wrong is done to him if he is held accountable for any crimes which he may commit in that condition." *McDaniel v. State*, 356 So.2d 1151, 1160-61 (Miss. 1978). Thus, in returning in some degree to the original common law formulation, Montana and other States have readopted "the old view that voluntary intoxication is such a dangerous vice that public order and discipline require that defendants should not be permitted to set it up as a defense." Note, *Intoxication as a Defense to a Criminal Charge in Pennsylvania – Sequel*, 76 Dick. L. Rev. 324, 331 (1976). Montana and other States have thus simply returned to a more objective model of

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[7] *See Rumsey*, 454 A.2d at 1124; Note, *Alcohol Abuse and the Law*, 94 Harv. L. Rev. 1660, 1681-82 (1981); Note, *Intoxication as a Criminal Defense*, 55 Colum. L. Rev. 1210, 1210 & n.1 (1955).

criminal responsibility motivated by utilitarian concerns of general deterrence. *See* Note, 55 Colum. L. Rev. at 1217; *cf. Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (objective model for constitutional civil rights liability for government officials).

These States have also recognized that, in the case of a voluntarily intoxicated defendant, it will be extremely rare for the accused to have failed to form the minimal requirements of conscious cognition and effect required for "knowledge." *Stasio*, 396 A.2d at 1134.[8] Legislatures that have abolished an accused's right to rely on voluntary intoxication have recognized that the use of such evidence runs an unacceptable risk of potential manipulation by defendants and confusion of juries, who may not adequately appreciate that intoxication evidence is to be used for the question of mental state, not for purposes of showing an excuse. *See generally Patterson*, 432 U.S. at 209 & n.11.

The Montana Supreme Court, however, found that Egelhoff had been denied " 'the right to a fair opportunity to defend against the State's accusations.' " 900 P.2d at 265, relying heavily on this Court's decision in

[8] "The great majority of moderately to grossly drunk or drugged persons who commit putatively criminal acts are probably aware of what they are doing and the likely consequences. In the case of those who are drunk, alcohol may have diminished their perceptions, released their inhibitions, and clouded their reasoning, but they still have sufficient capacity for the conscious mental processes required by the ordinary definitions of all or most specific mens rea crimes." Murphy, *Has Pennsylvania Found a Satisfactory Intoxication Defense*, 81 Dick. L. Rev. 199, 208 (1977).

Chambers v. Mississippi, 410 U.S. 284, 294 (1973). *Chambers*, however, will simply not bear the weight the Montana Supreme Court placed on it. There, this Court held that the cumulative effect of Mississippi's "voucher rule" and narrow hearsay exceptions effectively deprived a defendant charged with murder of the ability to prove a properly noticed alibi defense – a defense that went to the heart of whether the defendant inflicted any harm at all. *See* 410 U.S. at 295. There is no issue in this case that the State proved beyond a reasonable doubt that Egelhoff pulled the trigger, and *Chambers'* logic does not apply.

Nor is this a case where the important defense of self-defense has been precluded. *See Martin v. Ohio*, 480 U.S. 228, 233 (1987). In *Martin*, this Court suggested that if "self-defense evidence could not be considered in determining whether there was reasonable doubt about the State's case," a substantial federal issue might be presented. *Id.* at 233-34. But this case does not raise any of the important values that underlay a constitutional claim to the ability to put on a defense of self-defense. Mr. Egelhoff was not placed in the position of having to kill or be killed, and that simple fact warrants distinguishing *Martin*.

This Court's Due Process jurisprudence has recognized that, in this area, "the possible situations [are] too variable and that too much depend[s] on distinctions of degree to crowd them all into a simple formula." *Patterson*, 432 U.S. at 204 n.9. Montana law retains the general requirement that the State prove that Egelhoff acted "knowingly" or "purposely," and this required the State to prove beyond a reasonable doubt that Egelhoff did not kill accidentally or mistakenly. Had the evidence been

such that Egelhoff had, instead of shooting his victims at point blank range from the back seat of a station wagon, accidentally killed two unknown persons while taking "target practice" at some tin cans in the middle of a field, Egelhoff would have been entitled to an acquittal of the charge of deliberate homicide, even if he were voluntarily drunk. This is not a case where the elements of "knowledge" or "purpose" have been rendered surplusage by the statutory limit on the relevance of intoxication evidence. Rather, just as a rape-shield statute reaffirms a rape victim's right to say "no," Montana's statutory prohibition on voluntary intoxication evidence, for the purpose of negating the mens rea element of the offense of deliberate homicide, simply reflects an underlying value judgment about what conduct should be punished.[9]

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[9] Indeed, reversal in this case could have an effect upon the States' ability to exclude a variety of proof on the issue of mens rea, including perceptions of future duress, or necessity, or abused victim syndrome. Whether these various defenses ought to be permitted are important issues for the States, as well as Congress, and would be effectively eliminated from legislative consideration by a ruling in this case adverse to Montana.

CONCLUSION

For the foregoing reasons, the judgment of the Montana Supreme Court should be reversed, and the case remanded to that Court for further proceedings consistent with that disposition.

Dated: Honolulu, Hawaii, January 18, 1996.

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